IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 2 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DOLATSINH MANILAL PATELIA

Versus

STATE OF GUJARAT

Appearance:
MR KR RAVAL for Appellant
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellant came to be convicted by Sessions Judge, Panchmahals at Godhra for offence punishable under Section 302 of I.P.C. for committing murder of his wife Kokila by virtue of a judgment and order delivered in Sessions Case No.144 of 1993 on December 4th, 1993.

2. The facts of the case in brief are that on July 20th, 1993, the appellant alongwith his wife had gone for labour work in the field. As per the prosecution case, there was some quarrel between the husband and the wife. At that point of time, the appellant told his wife (the deceased) that after going home, she will be taught a lesson. In the evening at about 4 o'clock, they left for their home. On July 21st, 1993, an F.I.R. came to be lodged by Maniben, mother of deceased Kokila. As per her say, she was informed by Chandubhai, brother of the accused appellant on the previous evening at about 10.00 p.m. that Kokila was in a serious condition and was being given intravenous treatment and if she wants to see her face, she may immediately go. Maniben, therefore, rushed to the house of the appellant alongwith Bharatbhai Chaturbhai. On going there, they found that Kokila had expired and her dead body was in a swollen condition. She, therefore, informed the police. An offence was registered, investigated and ultimately, a chargesheet was filed. The learned Chief Judicial Magistrate, after following the procedure, committed the case to the Court of Sessions.

2.1 Charge against the accused was framed at Exh.1 to which he pleaded not guilty.

3. The learned Sessions Judge, after considering the evidence, came to the conclusion that the prosecution had successfully established the charge against the accused and convicted him for the offence of murder and sentenced him to imprisonment for life and a fine of Rs.500/-, in default, to undergo R.I. for two months.

4. Aggrieved by the said judgment and order, the present appeal is preferred.

5. Learned advocate Mr. Raval appearing for the appellant submitted that here is a case where the prosecution has not been able to adduce any direct evidence to connect the appellant with the crime. The case is one of circumstantial evidence and the link between the accused and the crime is not established by the prosecution. Mr. Raval submitted that there is no evidence to connect the accused with the offence. The

only evidence is to the effect that there was a quarrel between the appellant and his wife in the afternoon of July 20th, 1993 while they were working in the field. Thereafter, they completed their work in the field and left the field at about 4.00 p.m.. What happened thereafter is not brought on record. The only evidence is that of the mother of the deceased, Maniben who has been informed by one Chandubhai that Kokilaben is in a serious condition. What had happened to Kokilaben is not disclosed. There is no evidence to indicate as to how, in what condition and under what circumstances, the appellant came to be arrested by the police. Mr. Raval submitted that the court below has overlooked the aspect that links namely, what happened after the appellant and his wife left the field till the complainant was informed about the ill-health of the deceased, is not brought on record. The eye-witnesses to the incident in the afternoon of July 20th, 1993 do not speak anything about the appellant having said that he will teach the deceased a lesson after going home. Mr. Raval submitted that quarrels do take place between spouses and that need not necessarily result into such an episode. Mr. Raval submitted that the court below has committed an error in recording conviction and, therefore, the appeal may be allowed and the conviction may be set aside.

6. Learned Additional PP Mr. Sheth has opposed this appeal.

7. We have gone through the record and proceedings and we find substantial force in the arguments advanced by learned advocate Mr. Raval.

8. P.W.1 Dr.Jayesh Bhavsar (Exh.10) had performed post-mortem on the dead body of the deceased. According to him, Hyoid bone was fractured and the deceased died of throttling. Fracture of ribs was also found. The post-mortem note is at Exh.11.

8.1 P.W.2 Jayantibhai Nathabhai Prajapati was the co-worker with the appellant and his wife on the fateful day. He pleads ignorance about any dispute or quarrel between the appellant and his wife on the date of the incident. He has been declared hostile.

8.2 P.W.3 Rameshchandra Ambalal (Exh.13) speaks of some quarrel having taken place between the appellant and his wife Kokila while they were working in the field. According to him, the appellant and his wife left for home at 4 o'clock. He pleads ignorance about what happened thereafter. He learnt about the death of Kokila

on the next day.

8.3 Manilal Somabhai is examined at Exh.14. He also pleads total ignorance and has been declared hostile.

8.4 Complainant Maniben, mother of deceased Kokila states that quarrels were going on between the appellant and his wife. The quarrels were on petty issues. She says that Chandu came to inform her at about 10.00 p.m. and told her that if she wants to see the face of Kokila, she should immediately go. The complainant, however, went on the next morning as conveyance was not available in the night. Next morning, she found Kokila in a dead condition. She describes the dead body as swollen, blood streaming out of nostrils etc.

8.5 Bharat Chaturbhai, uncle of deceased Kokila is examined at Exh.17. He also deposes to the same effect as Maniben. According to him, he was informed by complainant Maniben about sickness of Kokila and he had accompanied Maniben.

8.6 The last witness is Investigating Officer Hirabhai Damor (Exh.19).

9. It is evident from the above narration of the evidence that excepting witness Rameshchandra Ambalal (Exh.13), there is no evidence to indicate that on the fateful day, there was a quarrel between the appellant and his wife or that the quarrel was of a high amplitude. All that has come on record is that after the quarrel, they continued to work and they left the working place at 4 o'clock in the evening. What happened thereafter is not brought on record. Only at about 10.00 p.m., the complainant Maniben claims to have been informed by Chandubhai that Kokila is in a serious condition. Chandubhai is not examined. There is no evidence to show as to what was the condition of Kokila and how that condition was attained. There is no evidence either to show that at the time of the incident, the appellant was in the house or with the deceased. There is no evidence to show as to when the appellant was arrested, wherefrom and under what circumstances. Neither the Investigating Officer speaks anything about it nor has the prosecution produced any arrest panchnama.

10. In view of the above set of circumstances, in our opinion, the chain of circumstances connecting the accused with the offence cannot be said to have been established by the prosecution. There are a number of missing links like the exact time of the incident is not

brought on record, involvement of the appellant is not brought on record though by circumstantial evidence and the inference that the appellant and appellant alone could have committed this crime is, therefore, not ably permissible to be drawn. In our opinion, therefore, the appeal deserves to be allowed and the same is allowed. The judgment and order impugned herein passed by Sessions Judge, Panchmahals, Godhra dated 4th December, 1993 in Session Case No.144 of 1993 is hereby set aside. The appellant is acquitted of the charge levelled against him. He shall be set at liberty forthwith, if not required in another case. There is no change in the order of the Sessions Court in respect of Muddamal.

(M.C. Patel, J.)

(A.L. Dave, J.)

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